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Reexamining the Parlement of Paris and the French *État de droit*

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Amalia D. Kessler

Reexamining the Parlement of Paris and the French *État de droit**

For the American academic, the experience of reading Hildesheimer and Morgat-Bonnet's *Le Parlement de Paris: Histoire d'un grand corps de l'État monarchique, XIIIe-XVIIIe siècle* is a bit like time travel – an opportunity to enjoy a mode of scholarship that is no longer possible in the United States. Tracing the Parlement of Paris from its earliest roots in the Capetian *Curia regis* and extending through to the French Revolution – with a concluding epilogue that examines present-day inheritances – the book is staggering in its scope. Through 830 pages of text (and images), the authors delve into the details of archival findings, luxuriating in the recounting of particular episodes, while also examining how their interpretations relate to the substantial secondary literature. As readers and writers of scholarly monographs published in the United States will know, it has been many decades since any academic press has been willing to publish a work of this scale, as economic pressures have led to increased cost constraints, which manifest themselves in, among other things, the imposition of stringent word limits.

Hildesheimer and Morgat-Bonnet's book is sure to become a key point of reference for anyone interested in the history of the Parlement of Paris. This is not only because of its extraordinary chronological scope, but also because of its thematic range. Written by a historian and a legal scholar, the book explores the parlement from the perspective of the disciplines of both history and law. It traces the complicated relations between the magistrates and the monarchy over time, highlighting their mutual support and interdependence and thus aiming to counteract the tendency to read back in time the conflicts that marked the 18th century. At the same time, the book explores the operations of the parlement as a court, detailing the evolution of its procedural practices and jurisprudence across a range of civil and criminal matters and highlighting many continuities across centuries. The scope of the work enables the authors to focus attention on an extraordinarily broad range of individuals, institutions, and incidents connected in one way or another with the long history of the parlement. That said, like a pointillist painting viewed from proximity, the very scale of the project makes it hard at times to see the forest for the trees. While the authors follow a number of through lines across the entire book, the very scale of the project is such that of necessity it loses at moments some of its punch.

The authors frame the book in opposition to what they describe as a teleological account of the parlement – one that assumes the Revolution and the ensuing break with the monarchy as the inevitable end point of the parlement's history and, as a result, distorts our overall understanding of the institution. There are many virtues to this approach, including not least its tendency to focus attention on the more mundane but nonetheless essential aspects of the parlement's functioning as a judicial institution, responsible for deciding a broad range of civil and criminal matters. As the authors astutely observe, these judicial features are often ignored in the rush to focus on the institution's more political dimensions – a choice reflected in the extensive attention given to the parlement's *remonstrances*, as compared to its other forms of work product. Noting that right and left have been remarkably unified in their shared criticism of the Old Regime parlement as embodying »le gouvernement des juges« (580), the authors

* Françoise Hildesheimer, Monique Morgat-Bonnet, Le Parlement de Paris: Histoire d'un grand corps de l'État monarchique, XIIIe–XVIIIe siècle, Paris: Librairie Honoré Champion 2018, 830 p., ISBN 978-2-7453-4812-8; all translations of the French text into English are my own.

suggest that this critique stems, in part, from a failure to undertake a deep historical account of the court's operation across centuries of the sort that they themselves have pursued in this book.

There is much to gain from the authors' choice to reframe their account of the parlement, including not least a reevaluation of the court's contributions to French law and society. The authors thus emphasize, for example, that while there is »[a] well-established historiographical tradition« that describes the parlement's »criminal justice […] as ruthless«, the reality was in fact far more nuanced (487). In particular, they note that the parlement deployed its appellate authority to constrain the excesses of lower courts that were all too eager to ignore formal rules of procedure and evidence in their haste to convict the socially and politically marginalized – such as those accused of witchcraft in the 16th and 17th centuries (487–489).

That said, the book reads at moments as if the authors have replaced one teleology with another. In the authors' account, the end point is no longer the Revolution, but instead modern-day France and its construction of a new system of rights-protecting administrative and constitutional law. They thus end their book with an account of, among other things, the parallels between today's *Conseil d'État* and the Old Regime parlement. Just as the Parlement of Paris aimed to make law by deciding individual cases from the perspective of the broader public interest or common good, so too the present-day *Conseil d'État*, operating as France's supreme court in matters of administrative justice, does much the same. More particularly, as codification has proved unable to keep pace with the proliferation of social and economic legislation generated by an increasingly expansive administrative state, the *Conseil d'État*, standing in for the old parlement, has resumed the role of norm creator and implementor (765–768).

On this view, the authors suggest, it is the »état de droit« itself that is the greatest through line of French history. While acknowledging important shifts across time, including not least the emergence of a new, post-revolutionary commitment to the separation of powers, the authors nonetheless emphasize the continuities across centuries. But in thus insisting on the deep roots of the French *état de droit*, the authors are at risk of expanding the term to such capacious proportions that it loses much of its meaning. Much like an older body of legal historical scholarship that saw in the English common law, dating back to the Magna Carta, the roots of a (supposedly distinctive) tradition of rights-protection and thus liberty, this approach to the French parlement risks a kind of anachronism. It implies, for example, that we can trace a more or less direct line from the parlement's choices to »suppress from the juridical order iniquitous and odious penal customs« (like water torture and the pillory) to today's culture of rights – in the form of »certain […] fundamental principles that have traversed the centuries« to the present (756).

In some tension with the book's insistence on the deep roots of today's legal system and values, and more appealing to this reader, is the authors' focus on what they describe at one point as »judicial politics« (689). From this perspective, much of the history of the parlement can be understood as following from the »tangled web of personal conflicts« and »resentment on the part of the magistrates who became pawns in the context of ministerial rivalries« (689). While the focus on the deep-rooted *état de droit* presses us to look for long-standing continuities, the focus on judicial politics leads the authors to explore the myriad contingencies that shaped the parlement's centuries-long evolution. In this view, the parlement was caught in a web of complex, institutional pressures – including not least the unintended consequences of venal officeholding, born of the monarchy's growing financial needs. But individual actors and their choices mattered, too, leading the authors to inquire, for example, into the personal motivations (including, not least, ambitions and resentments) that may well have helped to fuel Maupeou's seemingly ideologically motivated attempt to bring the parlements to heel in the early 1770s (630–635). In thus devoting attention to individual persons and personalities, the authors not only highlight the many fascinating contingencies that ended up shaping French law and society, but also make their book eminently readable. Indeed, one of the most striking and praiseworthy features of the book is that even as it promises to become a definitive point of scholarly reference, it is also a pleasurable read.

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